



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV -5 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John J. Rossetto

Channahon, IL 60410

RE: MUR 6778

Dear Mr. Rossetto:

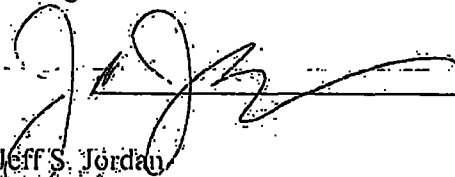
The Federal Election Commission reviewed the allegations in your complaint received on February 4, 2014. On October 22, 2015, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion and dismiss the allegation that David Hale for Congress and David Hale in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended and 11 C.F.R. § 110.11(c)(2) of the Commission's Regulations. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in dark ink, appearing to read "Jeff S. Jordan", is written over a horizontal line.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

ENCLOSURE

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: David Hale for Congress
and David Hale as treasurer

MUR 6778

I. INTRODUCTION

This matter was generated by a complaint filed by John J. Rossetto on February 4, 2014, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by David Hale for Congress and David Hale in his official capacity as treasurer (collectively the "Committee").¹ It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the Committee violated the Act and Commission regulations by distributing door hangers with inadequate disclaimers. Compl. at 1. On December 30, 2013, Hale announced on the Committee's Facebook page that he would distribute door hangers "across the district," and attached images of the door hangers to the post. *Id.*, Attach. 3. On the front were Hale's photograph, name, desired office, platforms, and an appeal to vote. *Id.*, Attach. 1. On the back was additional information including a slogan, more platforms, a statement of Hale's philosophy, and the Committee's contact information. *Id.*, Attach. 2. Also on the back was a disclaimer stating that the door hangers were "Paid for by David Hale for

¹ Hale was an unsuccessful candidate for the 2014 primary election for Illinois's sixteenth congressional district.

1 Congress.” *Id.* The Complaint argues that because the disclaimers were not contained inside a
2 printed box, they were “unclear and inconspicuous and not clearly readable.” *Id.* at 1.

3 In its Response, the Committee confirms that the images attached to the Complaint are
4 accurate and acknowledges that the disclaimers were not contained inside a printed box. Resp.
5 at 1; *see also* Resp., Attachs. 1, 2. However, the Committee argues that it acted in good faith
6 since the disclaimers were “clearly visible,” “clearly readable,” and “conspicuously and
7 prominently displayed.” Resp. at 1-2 (emphasis omitted). According to the Committee, there
8 was “clear contrast” between the disclaimers’ text and the door hangers’ background, and the
9 disclaimers were printed with “large lettering.” *Id.* at 2 (emphasis omitted). Furthermore, the
10 Committee states that the production of door hangers was part of Hale’s first experience as a
11 Congressional candidate and that Hale ran the campaign on his own, without an attorney or
12 campaign manager, and with little funding.² *Id.* at 2. In addition, Hale claims that he believed
13 the disclaimers complied with the Act and Commission regulations based on his reading of the
14 Campaign Guide for Congressional Candidates and Committees. *Id.*

15 **B. Legal Analysis**

16 The Act provides that whenever any person makes a disbursement for the purpose of
17 financing communications that expressly advocate the election or defeat of a clearly identified
18 candidate, such communication must include a disclaimer clearly stating who paid for the
19 communication and indicating whether it was authorized by a candidate or a candidate’s
20 authorized committee. 52 U.S.C. § 30120(a)(1); *see also* 11 C.F.R. § 110.11(a)(2).

² The Committee purchased a total of 7,500 door hangers for \$368.95 out of which a total of 5,500 were distributed by hand during the campaign and the remaining 2,000 were discarded. Resp. at 2; *see also* David Hale for Congress 2013 Year-End Report at 14 (Jan. 28, 2014).

1 Furthermore, all public communications made by a political committee must include
2 disclaimers.³ 11 C.F.R. § 110.11(a)(1). In the case of printed communications that are required
3 to include a disclaimer, the disclaimer should be: (1) of sufficient type size to be clearly
4 readable; (2) contained in a printed box set apart from the other contents; and (3) printed with a
5 reasonable degree of color contrast between the background and the printed statement. 11 C.F.R.
6 § 110.11(c)(2)(i)-(iii).

7 The Committee's door hangers required adequate disclaimers because they were
8 communications that expressly advocated for the election of David Hale and, further, because
9 they were general public political advertising paid for by a political committee. While the door
10 hangers appeared to have contained disclaimers on one side, the disclaimers were not contained
11 within a printed box. *See Resp., Attach. 2.* As such, the disclaimers did not satisfy the technical
12 requirements of Commission regulations applicable to printed communications. However, the
13 disclaimers provided sufficient identifying information so that the public likely would not have
14 been misled as to who paid for the door hangers. The disclaimers clearly stated the source of
15 funding and they were printed in the same size and with the same contrast as other content on the
16 back of the door hangers such as Hale's platforms, slogan, and the Committee's contact
17 information.

18 Accordingly, the Commission exercises its prosecutorial discretion and dismisses this
19 matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

³ Commission regulations define "public communication" as a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26.